

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 06/15/2015
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00453806-CU-PA-VTA
CASE TITLE: LINDSAY VS. CHRISTIAN

CASE CATEGORY: Civil - Unlimited

CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Motion for Summary Judgment and/or Adjudication
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Adjudication, 03/27/2015

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With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Deny Plaintiff's request for outright denial or continuance of Defendants' motion for summary adjudication of issues under CCP section 437c(h). Counsel's declaration did not satisfy requirements of the statute. Deny Defendants' motion for summary adjudication of issues as to cause of action 3 for negligence per se (Vehicle Code 20002 (a)) and exemplary damages claim. Defendants failed to establish lack of harm to Plaintiff and failed to establish that Defendant did not drink alcohol within 24 hours of the accident. Defendant's reliance on his own response to discovery served by the Plaintiff is not permitted. (CCP 2030.410. **Separate statement1-5, 10: undisputed7, 8, 9: established6, 11, 12: not established Discussion: "A defendant moving for summary judgment "bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto." (Aguilar, supra, 25 Cal.4th at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493; Code Civ. Proc., § 437c, subd. (p)(2).) Such a defendant bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. (Aguilar, at p. 850, 107 Cal.Rptr.2d 841, 24 P.3d 493.) Once the defendant meets its initial burden of production, the burden shifts to plaintiff to demonstrate the existence of a triable issue of material fact. (Id. at pp. 850–851, 107 Cal.Rptr.2d 841, 24 P.3d 493.)" (Falcon v Long Beach Genetics, Inc. (2014) 224 CA 4th 1263, 1271.) **Civil Code of Procedure section 437c(h) allows for denial of a motion for SJ (or SAI) or a continuance of same if it appears from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented. Plaintiff counsel's declaration fails to establish a sufficient basis to deny or continue the motion under section 437c(h).****

Exemplary damagesUndisputed material fact 6 states that within 24 hours before the accident, Defendant did not use or take any alcoholic beverages, marijuana or other drug or medication. In support of that UMF, Defendant relies on his response to Plaintiff's form interrogatory 2.13. However, CCP section 2030.410 provides: "At the trial or any other hearing in the action, so far as admissible under the rules of evidence, the propounding party or any party other than the responding party may use any answer or part of an answer to an interrogatory only against the responding party. It is not ground for objection to the use of an answer to an interrogatory that the responding party is available to testify, has testified, or will testify at the trial or other hearing." Based on section 2030.410, Defendants have not established

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that Defendant Christian did not drink within 24 hours before the accident. **UMF 11 states that Plaintiff did not suffer** any injuries as a result of Defendant Christian fleeing the scene of the accident. Paragraph 30 alleged that Vehicle Code 20002 (A) was designed to protect the class of persons which contain the Plaintiff as a member. Plaintiff alleged that the resulting harm suffered by Plaintiff was caused by the violation although what harm Plaintiff suffered due to D's fleeing the scene is not identified. Although close, Defendant did not establish that Plaintiff suffered no harm. **UMF states that** Plaintiff did not suffer monetary damages. It relies on special interrogatory 38. Special interrogatory 38 has nothing to do with damages. **Thus, Defendants have not established that punitive damages would not be appropriate in this matter.**

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